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Constitutional Law—Freedom of Speech and of the Press—Officials May Censor School-Sponsored Student Speech if Censorship Has Valid Educational Purpose

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NOTES

CONSTITUTIONAL LAW—FREEDOM OF SPEECH AND OF THE PRESS—OFFICIALS MAY CENSOR SCHOOL-SPONSORED STUDENT SPEECH IF CENSORSHIP HAS 'VALID EDUCATIONAL PURPOSE.' *Hazelwood School District v. Kuhlmeier*, 108 S. Ct. 562 (1988).

Journalism students at Hazelwood East High School in Missouri traditionally advertised the upcoming issue of the school paper by hanging banners.[1] An eighteen-square-foot banner in the school cafeteria heralded the May 13, 1983, issue of *Spectrum* for which students wrote stories about teenage pregnancy, divorce and related issues.[2] The stories never appeared in *Spectrum*, however. Principal Robert E. Reynolds ordered the newspaper's faculty sponsor to excise the two pages which featured them.[3]

The student journalists who produced *Spectrum* learned of the censorship when the school distributed a four-page issue instead of the planned six-page issue.[4] The students met with the principal, who stated that the stories on the two deleted pages were inappropriate, personal, sensitive, and unsuitable.[5] Three *Spectrum* staff members sued the school district, the principal, the superintendent, and the assistant superintendent in federal court. The students sought injunctions, money damages, and a declaration that the censorship violated

1. Kuhlmeier v. Hazelwood School Dist., 607 F. Supp. 1450, 1458 (E.D. Mo. 1985), *rev'd*, 795 F.2d 1368 (8th Cir. 1986), *rev'd*, 108 S. Ct. 562 (1988).

2. *Id.*

3. *Id.* at 1459. The two pages of the newspaper which were censored featured six stories: (1) the accounts of three anonymous Hazelwood East students about their pregnancies; (2) a story on the effect of divorce on children; (3) a story based on statistics about teen-age pregnancy; (4) a story about a proposed rule to require federally funded clinics to notify parents when teen-agers seek birth control assistance; (5) a survey of the problems faced by teen-age marriages; and (6) a survey of reasons why teen-agers run away from home. *Id.* at 1457. Principal Reynolds only objected to the first two stories. The principal ordered the deletion of both pages on which the stories appeared, rather than order changes made in the stories, because he did not believe there was time to make the changes prior to publication. *Id.* at 1459.

4. *Id.* at 1459.

5. Kuhlmeier v. Hazelwood School Dist., 795 F.2d 1368, 1371 (8th Cir. 1986), *rev'd*, 108 S. Ct. 562 (1988). The district court stated that Reynolds told the group of student journalists the articles were deleted because they were "too sensitive" for "our immature audience of readers." 607 F. Supp. at 1459.

their first amendment rights. The district court dismissed the plaintiffs' claims for injunctive relief, ruling that the students' graduation rendered their claims moot.[6]

At trial,[7] the principal testified that he deleted the two pages because of problems in two of the six articles which appeared on those pages.[8] One of the problem stories chronicled experiences three students had during their pregnancies. The principal expressed concern that the anonymous subjects of the story might be identified.[9] The other offending article discussed the impact of divorce upon students. The principal thought it unfair that the author had not given the parent of a student quoted in the article an opportunity to respond.[10]

The district court held that the defendants violated no first amendment rights of the plaintiffs.[11] A divided panel of the United States Court of Appeals for the Eighth Circuit reversed.[12] The United

6. Kuhlmeier v. Hazelwood School Dist., 596 F. Supp. 1422 (E.D. Mo. 1984).

7. The district court bifurcated the issues of declaratory relief and liability from the issue of damages, with the bench trial dealing solely with liability. Kuhlmeier v. Hazelwood School Dist., No. 83-2033C(1) (E.D. Mo. Nov. 8, 1984) (order and mem.).

8. Kuhlmeier v. Hazelwood School Dist., 607 F. Supp. 1450, 1459-60 (E.D. Mo. 1985), *rev'd*, 795 F.2d 1368 (8th Cir. 1986), *rev'd*, 108 S. Ct. 562 (1988). *See supra* note 3 and accompanying text.

9. A teacher at the school testified she could identify at least one and perhaps all three girls. Hazelwood School Dist. v. Kuhlmeier, 108 S. Ct. 562, 571 (1988). The district court labeled the principal's concern over the loss of the girls' anonymity legitimate and reasonable. The court based this conclusion on facts such as the small number of pregnant girls at the 1,800-student school and several identifying characteristics which were disclosed in the story. *Kuhlmeier*, 607 F. Supp. at 1466.

10. *Kuhlmeier*, 108 S. Ct. at 572. *See infra* notes 86-87 and accompanying text. Unknown to the principal, however, the faculty adviser had deleted the quoted student's name, obviating the need for a response. Kuhlmeier v. Hazelwood School Dist., 795 F.2d 1368, 1371 (8th Cir. 1986).

11. *Kuhlmeier*, 607 F. Supp. at 1467. The district court found that *Spectrum* was not a public forum where content-based restrictions on free expression must be narrowly drawn to effectuate compelling government interests. *Spectrum* was, instead, an integral part of the school's curriculum and was not a public forum. Thus, the court concluded, school officials could reasonably regulate the newspaper. Because Principal Reynolds reasonably censored the newspaper, he did not violate the student's rights to free expression. *Id.* at 1465-66.

12. *Kuhlmeier*, 795 F.2d 1368. Circuit Judge Heaney, for himself and Circuit Judge Arnold, found *Spectrum* to be a public forum because the school intended the newspaper to be a public forum and operated it as a conduit for student viewpoint. Because school officials feared neither material disruption of classwork, substantial disorder, nor invasion of the rights of others from the censored material, the censorship was improper. *Id.* at 1374-76. In his dissent, Circuit Judge Wollman stated that the censorship was proper and adopted the reasoning of Seyfried v. Walton, 668 F.2d 214 (3d Cir. 1981) (school officials' banning performance of school-sponsored musical upheld where musical was a part of the school's curriculum). For a brief analysis of the Eighth Circuit's decision, viewing the opinion as a "strong protection of students' first amendment rights," *see* Survey, *Freedom of the Press—Censorship of High School Newspaper Only Allowed if Tort Liability Could Result*, 10 UALR L.J. 132, 133 (1987-88).

States Supreme Court granted certiorari[13] and reversed the Eighth Circuit in a five-to-three decision, holding that educators do not offend the first amendment by censoring school-sponsored speech if the censorship is reasonably related to educational concerns. *Hazelwood School District v. Kuhlmeier*, 108 S. Ct. 562 (1988).

For more than three centuries, scholars have expounded upon a free society's natural horror of censorship and the benefits of press liberty.[14] Justice Brandeis stated that the nation's founders crafted the first amendment because they "believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; . . . that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government."[15]

The Supreme Court has recognized that freedom of the press, as it appears in the first amendment,[16] has always meant, at the least, no prior restraints on the press.[17] The Court has traditionally applied stricter scrutiny on prior restraint of speech and press than it has on subsequent punishment for speech.[18] Prior restraints, the Court has stated, are "the most serious and the least tolerable infringement" on

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13. Hazelwood School Dist. v. Kuhlmeier, 107 S. Ct. 926 (1987).

14. In 1644, Milton offered one of the first defenses of press liberty:

> [T]hough all the windes of doctrin were let loose to play upon the earth, so Truth be in the field, we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the wors, in a free and open encounter.

J. MILTON, *Aeropagitica: a speech of Mr. John Milton for the liberty of unlicenc'd printing, to the Parliament of England*, in 4 THE WORKS OF JOHN MILTON 347 (F. Patterson, ed. 1931).

Utilitarian philosopher John Stuart Mill wrote that the human race is robbed by censorship and that the people who disagree with the censored opinion are the greater victims. "If the opinion is right, they are deprived of the opportunity of exchanging error for truth; if wrong, they lose . . . the clearer perception and livelier impression of truth, produced by its collision with error." J.S. MILL, ON LIBERTY 85 (H.B. Acton ed. 1984) (1859).

15. Whitney v. California, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring) (affirmed conviction of Communist Labor Party organizer under California Criminal Syndicalism Act). Brandeis's opinion "was labelled a 'concurrence' [but] it read like a dissent." J. NOWAK, R. ROTUNDA & J. YOUNG, CONSTITUTIONAL LAW § 16.13 at 856 (3d ed. 1986).

16. "Congress shall make no law . . . abridging the freedom of speech, or of the press . . . ." U.S. CONST. amend. I.

17. In Near v. Minnesota, 283 U.S. 697, 713 (1931), the Court stated that the prohibition of prior restraints was the principal purpose of the first amendment's press protection. A prior restraint is "any prohibition on the publication or communication of information prior to such publication or communication." S. GIFIS, LAW DICTIONARY 363 (2d ed. 1984).

18. *See, e.g.*, Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 558-59 (1975) (city improperly denied use of a municipal theater for showing the musical *Hair*).

first amendment rights.[19] Justice White has stated that the same speech for which a speaker may be constitutionally punished may nonetheless be protected from prior restraint.[20] Justifications for prohibiting prior restraints[21] include the difficulty of knowing in advance what an individual will say[22] and the risk of uninhibited censorship due to the delicate distinctions between protected and unprotected speech.[23]

Approximately fifty years ago, the Supreme Court began to apply the public forum doctrine to first amendment cases involving government property.[24] This doctrine is based upon the premise that the first amendment affords significantly greater protection to expression

19. Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 559 (1976) (held improper a court order restraining reporters from publishing prejudicial pretrial publicity).

20. *E.g.*, New York Times Co. v. United States, 403 U.S. 713, 733 (1971) (White, J., concurring). The Court held unconstitutional prior restraints on newspapers which wanted to publish a classified study on U.S. foreign policy-making in Vietnam. White stated that after publication, the government could still proceed against the newspapers criminally.

21. The Court rarely feels a need to justify its rationale in imposing a heavier burden on censorship than post-publication punishment. *See, e.g.*, Carroll v. President and Comm'rs of Princess Anne, 393 U.S. 175, 182 (1968) where the Court simply declared that the "impact and consequences of subsequent punishment . . . are materially different from those of prior restraint."

22. *See* Near v. Minnesota, 283 U.S. 697 (1931) (invalidated state law which authorized injunctions against malicious, scandalous and defamatory publications).

23. The Court has stated that the "line between legitimate and illegitimate speech is often so finely drawn that the risks of freewheeling censorship are formidable." *Southeastern Promotions, Ltd.*, 420 U.S. at 559. Another difference between the effect of a prior restraint and subsequent punishment is that where a prior restraint is obeyed, there is a loss in the immediacy, and thus the impact, of the speech. *See* A. BICKEL, THE MORALITY OF CONSENT 61 (1975), *quoted in* Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 609 (1976). "A prior restraint . . . has an immediate and irreversible sanction. If it can be said that a threat of criminal or civil sanctions after publication 'chills' speech, prior restraint 'freezes' it at least for the time." *Nebraska Press Ass'n*, 427 U.S. at 559. "It is vital to the operation of democratic government that the citizens have facts and ideas on important issues before them. A delay of even a day or two may be of crucial importance in some instances." A Quantity of Copies of Books v. Kansas, 378 U.S. 205, 224 (1964) (Harlan, J., dissenting) (plurality decision struck down state procedure for seizing obscene books). *See generally* Hunter, *Toward a Better Understanding of the Prior Restraint Doctrine: A Reply to Professor Mayton*, 67 CORNELL L. REV. 283 (1982); Mayton, *Toward a Theory of First Amendment Process: Injunctions of Speech, Subsequent Punishment, and the Costs of the Prior Restraint Doctrine*, 67 CORNELL L. REV. 245 (1982); Redish, *The Proper Role of the Prior Restraint Doctrine in First Amendment Theory*, 70 VA. L. REV. 53 (1984).

24. *See* Hague v. Committee for Indus. Org., 307 U.S. 496, 515-16 (1939). *See generally* Kalven, *The Concept of the Public Forum: Cox v. Louisiana*, 1965 SUP. CT. REV. 1; Stone, *Fora Americana: Speech in Public Places*, 1974 SUP. CT. REV. 233; Note, *Public Forum Analysis After Perry Education Ass'n v. Perry Local Educators' Ass'n—A Conceptual Approach to Claims of First Amendment Access to Publicly Owned Property*, 54 FORDHAM L. REV. 545 (1986).

in public forums than it does to expression in nonpublic forums.[25]

Government-held forums for expression fall into three types:[26] traditional public forums, such as streets and parks;[27] designated public forums which the government has opened for use by the public[28] for speech activity, such as auditoriums;[29] and public properties which are neither by tradition nor designation forums for public communication, such as mailboxes.[30] Generally, the government may im-

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25. *See infra* notes 26-35 and accompanying text.

26. Perry Education Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37 (1983). In *Perry*, the Court held that mailboxes maintained by the school for teachers were nonpublic forums and therefore the school violated no first amendment rights of a rival union to the teachers' bargaining agent by denying the rival union access to the mailboxes. In the decision, Justice White attempted to clarify the public forum cases by constructing a three-level hierarchy of publicly held forums where expression occurs. *See infra* notes 27-35 and accompanying text.

27. Places which are traditional public forums "have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague*, 307 U.S. at 515 (dictum) *quoted in Perry*, 460 U.S. at 45. *See, e.g.*, United States v. Grace, 461 U.S. 171 (1983) (public sidewalks surrounding U.S. Supreme Court building); Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 599-600 (1980) (Stewart, J., concurring) (courtrooms, "[e]ven more than city streets, sidewalks and parks" are an area of "traditional First Amendment Activity"); Cox v. Louisiana, 379 U.S. 536 (1965) (state capitol building and courthouse grounds).

28. The *Perry* Court noted that a designated public forum may be created for a limited purpose, such as for use by student groups, or for the discussion of certain subjects. *Perry*, 460 U.S. at 46 n.7.

29. Municipal theaters and public auditoriums are examples of designated public forums. *Id.* at 45-46. *See, e.g.*, Widmar v. Vincent, 454 U.S. 263 (1981) (university facilities generally available to student groups); Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546 (1975) (municipal theater).

Lower courts have often considered state-owned publications public forums or have treated them as such without specifically mentioning the fact. In San Diego Comm. Against Registration & the Draft v. Governing Bd. of Grossment Union High School Dist., 790 F.2d 1471 (9th Cir. 1986), the court held that a school board had established a limited public forum in its high school newspapers. Unless the board had a compelling reason to exclude speech otherwise within the boundaries of the forum, the board could not censor the newspapers. The court expressly applied the *Perry* analysis in finding that the board had created a public forum by designation. *San Diego Comm.*, 790 F.2d at 1474-78.

In Joyner v. Whiting, 477 F.2d 456 (4th Cir. 1973), a college president attempted to withdraw funding from a student newspaper which advocated segregation. The court stated that "if a college has a student newspaper, its publication cannot be suppressed [simply] because college officials dislike its editorial comments." *Joyner*, 477 F.2d at 460. The court further found that the college could not censor constitutionally protected speech.

But see Frasca v. Andrews, 463 F. Supp. 1043 (E.D.N.Y. 1979), where the court applied a rational basis test in upholding censorship of two letters to the editor of a high school newspaper. This standard of scrutiny indicates the court did not find the paper to be a public forum.

30. The first amendment "does not guarantee access to property simply because it is owned . . . by the government." United States Postal Serv. v. Council of Greenburgh Civic Ass'ns, 453 U.S. 114, 129 (1981) (held as constitutional a prohibition against unstamped, 'mailable matter' in mailbox approved by U.S. Postal Service), *cited in Perry*, 460 U.S. at 46. *See, e.g.*, Members of City Council of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789 (1984) (upheld ordinance against posting of signs on street light posts because light posts are

plement content-neutral restrictions regarding time, place, and manner of speech in public forums.[31] Content-neutral restrictions, however, must still be narrowly tailored to serve a significant governmental interest, and they must leave open ample alternative means of communications.[32] Content-based restrictions on expression are permitted in public forums only when there is a compelling governmental justification.[33] The same degree of scrutiny which applies to restrictions on speech in traditional public forums applies to restrictions on speech in designated public forums.[34] In nonpublic forums, the government may place reasonable restrictions on the freedom of expression.[35]

In *Tinker v. Des Moines Independent Community School District*,[36] the 1969 landmark[37] symbolic speech case, the Supreme Court held that students have a right to free speech in public schools.[38] The

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not public forum); Minn. State Bd. for Community Colleges v. Knight, 465 U.S. 271 (1984) (private meetings between academic administrators and teacher union representatives not a public forum).

31. *Perry*, 460 U.S. at 45. *See, e.g.*, City of Madison School Dist. v. Wisconsin Employment Relations Comm'n, 429 U.S. 167 (1976). The Court said some regulations of the manner and time in which speeches could be delivered at a school board meeting are permissible. However, the Court invalidated a state employment commission order which prohibited teachers who are not union representatives from talking about contract negotiations at meetings where the public can generally speak.

32. *Perry*, 460 U.S. at 45 (citing *Council of Greenburgh*, 453 U.S. at 132).

33. "For the State to enforce a content-based exclusion it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end." *Id.* at 45 (citing Carey v. Brown, 447 U.S. 455, 461 (1980) (selective exclusions from a public forum may not be justified on content references alone)).

34. *Id.* at 46, where Justice White stated that the same standards of openness apply to public forums created by tradition and by state designation. Justice White then stated, however, that designated public forums may be regulated by "reasonable" restrictions regarding time, place, and manner. This would appear to be a lesser level of scrutiny than the "narrowly tailored" standards he found applicable to similar restrictions in traditional public forums.

35. "In addition to time, place, and manner regulations, the State may reserve the [nonpublic] forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view." *Perry*, 460 U.S. at 46 (citing *Council of Greenburgh*, 453 U.S. at 131 n.7).

36. 393 U.S. 503 (1969). The Court stated that school officials violated the first amendment rights of public school students by suspending them from school for wearing armbands in class to protest the Vietnam War. When school principals learned of the planned protest before it occurred, they adopted a policy prohibiting armbands in school. *Id.* at 504. The Court found that "[i]n the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views." *Id.* at 511.

37. "The starting point for any analysis of the first amendment rights of high school students is *Tinker* . . . ." Kuhlmeier v. Hazelwood School Dist., 795 F.2d 1368, 1371 (8th Cir. 1986).

38. First amendment rights, "applied in light of the special characteristics of the school environment, are available to teachers and students." 393 U.S. at 506.

Court found that regulations limiting the free expression rights of students are proper only if the regulations are aimed at behavior which "materially disrupts classwork or involves substantial disorder or invasion of the rights of others."[39]

Because of the lack of Supreme Court decisions applying *Tinker* over the next seventeen years, various circuit courts interpreted the first amendment rights of high school students inconsistently.[40] The Second Circuit read *Tinker* as requiring great deference to school officials in their practice of prior restraint[41] and in determining what constitutes a disruption for which punishment is permissible.[42] The Seventh Circuit, at the other extreme, read *Tinker* as generally prohibiting school districts from practicing prior restraint.[43] The Fourth Circuit, falling between the Second and Seventh in its interpretation of *Tinker*, presumed prior restraint by school officials to be unconstitutional but permitted school censorship subject to clear regulations and adequate opportunities for students to appeal the officials' decision to censor.[44] The First,[45] Fifth,[46] and Ninth[47] Circuits

39. *Id.* at 513. The Court made plain that mere "undifferentiated fear or apprehension of disturbance" will not justify speech restrictions. *Id.* at 508. Any "departure from absolute regimentation," any "variation from the majority's opinion," any "word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another" can cause problems, but the Constitution "says we must take this risk." *Id.* This "hazardous freedom" in our "relatively permissive" society is the basis of our national strength, independence, and vigor. *Id.* at 508-09.

40. *See generally* Huffman & Trauth, *High School Students' Publication Rights and Prior Restraint*, 10 J.L. & EDUC. 485 (1981); Note, *Administrative Regulation of the High School Press*, 83 MICH. L. REV. 625 (1984).

41. In Trachtman v. Anker, 563 F.2d 512 (2d Cir. 1977), the divided court held that the school properly prevented the distribution in the school newspaper of a student survey which solicited information regarding students' sexual practices because of the survey's potential for invading the rights of others.

42. In Eisner v. Stamford Bd. of Educ., 440 F.2d 803 (2d Cir. 1971), the court invalidated a school rule requiring materials which were to be distributed on the campus to be submitted to school officials before hand, but said in dicta, "We do not agree . . . that reasonable and fair regulations which . . . required prior submission of material for approval, would in all circumstances be an unconstitutional 'prior restraint.' " *Id.* at 805.

43. In Fujishima v. Board of Educ., 460 F.2d 1355, 1358 (7th Cir. 1972), the court held the school wrongly punished students for distributing an underground newspaper, noting that *Tinker* should be used to determine only whether subsequent punishment for speech is proper.

44. In Baughman v. Freienmuth, 478 F.2d 1345 (4th Cir. 1973), the court struck down a school rule requiring prior submission of some materials to be distributed on campus, saying the rule was vague, overbroad, and procedurally inadequate.

45. *See* Riseman v. School Comm. of Quincy, 439 F.2d 148 (1st Cir. 1971), where the court invalidated a school rule prohibiting the distribution of advertisements on school property. The court declined to hold prior restraint invalid *per se* but said this restraint was invalid because the school made no efforts to "minimize the adverse effect." *Id.* at 149.

46. *See* Shanley v. Northeast Indep. School Dist., 462 F.2d 960, 970 (5th Cir. 1972) (prior screening of student expression permitted "under clear and reasonable regulations").

have generally followed this intermediate position, allowing school officials to practice prior restraint but subjecting such restraint to close judicial scrutiny. The Eighth Circuit, in a footnote to *Kuhlmeier*, cited each of the three major positions on school censorship, but indicated that it would follow a moderate path.[48] In 1987, the Eighth Circuit cited the same footnote for the position that the Eighth Circuit has "clearly rejected the view that prior restraints are *per se* unconstitutional in the high-school context."[49]

From 1970 through the mid-1980s, the Supreme Court did not consider the free speech rights of high school students.[50] The Court's first post-*Tinker* decision involving the right of high school students to free expression came in the 1986 case of *Bethel School District No. 403 v. Fraser*.[51] The *Fraser* Court held that a school may punish a student who gives a "lewd" speech[52] at a school assembly; that a high school student's free speech rights are not "automatically coextensive

47. *See* Nicholson v. Board of Educ. Torrance School Dist., 682 F.2d 858, 863 (9th Cir. 1982) (in dicta, said high school journalists' right to be free from pre-publication review is not "unfettered").

48. "[T]he *Tinker* standards are to be applied whenever administrators can reasonably predict that the content of a student publication will violate the *Tinker* standard. Of course, if student writings are to be censored prior to publication, the least restrictive means are to be followed." Kuhlmeier v. Hazelwood School Dist., 795 F.2d 1368, 1374 n.5 (8th Cir. 1986), *rev'd*, 108 S. Ct. 562 (1988) (citations omitted).

49. Bystrom v. Fridley High School Indep. School Dist. No. 14, 822 F.2d 747, 750 (8th Cir. 1987) (citing *Kuhlmeier*, 795 F.2d at 1374 n.5). The court upheld a high school's policy permitting prior review and prior restraint of an *underground* student newspaper on campus. The court favorably cited the Second Circuit's position on prior restraints in Eisner v. Stamford Bd. of Educ., 440 F.2d 803, 810 (2d Cir. 1971). *Bystrom*, 822 F.2d at 751. However, Circuit Judge Arnold, writing for the three-member Eighth Circuit panel, cautioned that the court "held only that the [school's] policy . . . is not unconstitutional on its face." *Id.* at 755. He wrote that if the policy is wrongly applied to constitutionally protected speech, courts will hear students' complaints and the burden will be on the school administrators to justify their actions. *Id.*

50. Note, *supra* note 40. *But see* Board of Educ., Island Trees Union Free School Dist. No. 26 v. Pico, 457 U.S. 853 (1982), in which the Supreme Court considered the extent to which the first amendment limits schools from banning books from high school and junior high school libraries. In Justice Brennan's plurality decision, the Court found that students have a right to receive ideas. Thus, the local school board was not allowed to remove books from library shelves simply because it disliked the ideas contained in the books.

51. 106 S. Ct. 3159 (1986).

52. Justice Brennan, concurring in Chief Justice Burger's opinion for the Court, set out the text of Matthew N. Fraser's nominating speech for a friend seeking student government office:

> I know a man who is firm—he's firm in his pants, he's firm in his shirt, his character is firm—but most . . . of all, his belief in you, the students of Bethel, is firm.
>
> Jeff Kuhlman is a man who takes his point and pounds it in. If necessary, he'll

with the rights of adults in other settings;"[53] and that the school board should decide what manner of speech in classrooms or school assemblies is proper.[54]

The Ninth Circuit, which affirmed the trial court's award of damages to the student who gave the speech in *Fraser*, held that the speech was indistinguishable from the protest armband at issue in *Tinker*.[55] The Supreme Court in *Fraser* said that there was an important difference between the political message of the armbands in *Tinker* and the sexual content of the speech in *Fraser*.[56] The Court stated that the punishment of the student in *Fraser* was proper because the school needed to disassociate itself from the vulgar speech which was inconsistent with school values.[57]

The next opportunity for the Court to reconsider *Tinker* came just eighteen months after *Fraser*. In *Hazelwood School District v. Kuhlmeier*,[58] Justice White, writing for the majority, stated that the

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take an issue and nail it to the wall. He doesn't attack things in spurts—he drives hard, pushing and pushing until finally—he succeeds.

Jeff is a man who will go to the very end—even the climax, for each and every one of you.

So vote for Jeff for A.S.B. vice-president—he'll never come between you and the best our high school can be.

Id. at 3167 (Brennan, J., concurring).

Dissenting, Justice Stevens noted the speech contained no obscene or profane language. *Id.* at 3171 (Stevens, J., dissenting). Justice Stevens stated that the honor student delivering the speech was probably better situated to determine its offensiveness than "a group of judges who are at least two generations and 3,000 miles away from the scene of the crime." *Id.* at 3169. Supporting Stevens's contentions was the finding by the Ninth Circuit that there "is no evidence in the record indicating that any students found the speech to be offensive." Fraser v. Bethel School Dist. No. 403, 755 F.2d 1356, 1361 n.4 (9th Cir. 1985), *rev'd*, 106 S. Ct. 3159 (1986).

53. 106 S. Ct. at 3164.

54. *Id.* at 3165.

55. *Fraser*, 755 F.2d 1356, *cited in* Bethel School Dist. No. 403 v. Fraser, 106 S. Ct. 3159, 3163 (1986).

56. 106 S. Ct. at 3163. Dissenting, Justice Marshall said that there was a lack of evidence to convince either of the two lower courts that education at Bethel School was disrupted by the speech; therefore, *Tinker* prohibited the punishment of the student. *Id.* at 3168-69 (Marshall, J., dissenting).

57. *Id.* at 3166. There is general agreement that the decision expanded the rights of school officials to regulate student speech, but there is a sharp disagreement on whether the expansion was proper. *Compare* Note, *Mathew Fraser Sheds His Constitutional Rights to Freedom of Speech at the Schoolhouse Gates*, 20 AKRON L. REV. 563 (1987) (concluding that school officials need leeway to regulate student speech in order to maintain discipline in the schools) *with* Note, *Constitutional Law: Freedom of Speech in the Public Schools—Fraser v. Bethel School District Revisited*, 39 OKLA. L. REV. 473 (1986) (concluding that instead of more discretion, what school officials need is better judgment and clear statements of first amendment principles to protect the young as well as the old).

58. 108 S. Ct. 562 (1988).

case concerned the extent of editorial control educators may exercise over a student newspaper which is part of the school's curriculum.[59] Justice White began his analysis by citing Justice Fortas's oft-quoted statement from *Tinker* that public school students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[60] Justice White stated that *Tinker* must be viewed today in the context of the Court's *Fraser*[61] opinion, in which five justices agreed that "[n]othing in the Constitution prohibits the states from insisting that certain modes of expression are inappropriate and subject to sanctions."[62]

The Court found that *Spectrum*, the Hazelwood East High School newspaper, was not a public forum.[63] School facilities constitute public forums only if school authorities have opened the facilities "for indiscriminate use by the general public"[64] or some segment of the public, such as student organizations.[65] The Court said *Spectrum* amounted to a laboratory situation and part of the school's curriculum.[66] Further, school officials had always exerted pre-publication review and a great deal of control over the paper.[67] The Court termed "equivocal at best" the evidence relied on by the Eighth Circuit in finding the newspaper to be a public forum.[68] The school did not

59. *Id.* at 565.

60. Tinker v. Des Moines Indep. Community School Dist., 393 U.S. 503, 506 (1969), *quoted in Kuhlmeier*, 108 S. Ct. at 567.

61. Bethel School Dist. No. 403 v. Fraser, 106 S. Ct. 3159 (1986).

62. *Id.* at 3165. Justice White stated that comments in Justice Black's unjoined dissent in *Tinker*, 393 U.S. at 515, were "especially relevant" to the analysis in *Kuhlmeier*, 108 S. Ct. at 570 n.4 (citing *Fraser*, 106 S. Ct. at 3166).

63. *Kuhlmeier*, 108 S. Ct. at 569.

64. *Id.* at 568 (citing Perry Education Ass'n. v. Perry Local Educators' Ass'n, 460 U.S. 37, 47 (1983)).

65. *Id.* (citing *Perry*, 460 U.S. at 47 n.7).

66. *Id.*

67. *Id.*

68. *Id.* The Eighth Circuit cited a school board policy and *Spectrum*'s statement of policy as evidence that the school intended to create a public forum. Kuhlmeier v. Hazelwood School Dist., 795 F.2d 1368, 1372-73 (8th Cir. 1986). The school board policy, which stated that student publications would not "restrict free expression or diverse viewpoints within the rules of responsible journalism," also stated that the publications were "developed within the adopted curriculum and its educational implications." *Kuhlmeier*, 108 S. Ct. at 569. *Spectrum*'s Statement of Policy declared that the newspaper "accepts all rights implied" by the first amendment. *Id.* The Statement of Policy also said that only speech which materially and substantially interferes with school discipline "can be found unacceptable and therefore be prohibited." *Id.* at 569 n.2. At most, the Court wrote, this suggests school officials will not interfere with rights which attend the publication of a school-sponsored newspaper, but does not "reflect an intent to expand those rights by converting a curricular newspaper into a public forum." *Id.* at 569.

create a public forum,[69] the Court stated, because school officials did not clearly intend to create a public forum.[70]

The Court identified two types of student speech at public schools: (1) "personal expression that happens to occur on the school premises"[71] and (2) school-sponsored expression.[72] The level of judicial scrutiny of school regulation of student speech depends on which of the two types of speech is at issue.[73]

Speech of the first type, where a student expresses his personal views at school, is still accorded the *Tinker* level of scrutiny.[74] *Tinker* would bar an education official's attempt to silence a student for personal expression on campus[75] unless the personal expression materially disrupts classwork, involves substantial disorder, or invades the rights of others.[76]

Speech of the second type, expressive activity sponsored by the school, is subject to a different analysis.[77] School officials may regulate school-sponsored speech for any valid educational purpose.[78] This increased power of censorship is justified for three reasons: (1) to ensure that students learn what they are supposed to learn; (2) to ensure that students are not exposed to material which may be inappropriate for their level of maturity; and (3) to ensure that people do not confuse the views of the students with the views of the school.[79]

School-sponsored speech, according to the Court, includes school newspapers and yearbooks, school plays and musicals, and

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69. *Kulmeier*, 108 S. Ct. at 569.

70. *Id.* (citing Cornelius v. NAACP Legal Defense & Educ. Fund, 473 U.S. 788, 802 (1985)). In *Cornelius*, the Court determined that a federal government employee charity drive did not constitute a public forum. Critical to the analysis, the Court said, is intent to open a nontraditional forum for public discourse. *Cornelius*, 473 U.S. at 802. To determine that the government intended to create a public forum, the Court has looked to the policy and practice of the government, as well as the "nature of the property and its compatibility with expressive activity." *Id.*

71. *Kuhlmeier*, 108 S. Ct. at 569. *See infra* notes 74-76 and accompanying text.

72. *Kuhlmeier*, 108 S. Ct. at 569. *See infra* notes 77-80 and accompanying text.

73. *Kuhlmeier*, 108 S. Ct. at 570-71.

74. *Id.* at 567 (citing Tinker v. Des Moines Indep. Community School Dist., 393 U.S. 503, 509). *See supra* notes 36-39 and accompanying text.

75. *Kuhlmeier*, 108 S. Ct. at 569.

76. *Tinker*, 393 U.S. at 513.

77. *Kuhlmeier*, 108 S. Ct. at 570.

78. *Id.* at 571. "[W]e hold that educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns." *Id.*

79. *Id.* at 570.

other student activities which people might reasonably think are authorized by the school.[80] The Court will allow judicial intervention to protect a student's first amendment right to free speech in connection with such school-sponsored expressive activities only when the censorship decision lacks a valid educational purpose.[81] The Court found this standard consistent with its view that education is primarily the responsibility of parents, teachers, and school officials, and not of federal judges.[82]

The Court found that the principal acted reasonably in deleting two pages from the May 13, 1983, issue of *Spectrum*. Thus, the Court held that no violation of first amendment rights occurred.[83] The principal reasonably concluded that frank talk in the pregnancy article[84] was inappropriate for 14-year-old freshmen and the students' younger siblings who might read the paper.[85] Further, the principal reasonably thought that journalistic fairness required a response from a person whom he thought had been identified as an inattentive parent[86] in the article on divorce.[87]

Justice Brennan, joined by Justices Marshall and Blackmun, wrote a stinging dissent, explaining that the case should have started and ended with a *Tinker* analysis.[88] The dissenters stated that the

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80. *Id.* at 569.

81. *Id.* at 571.

82. *Id.*

83. *Id.* at 572.

84. The girl identified by the pseudonym "Terri" in the censored pregnancy article offered the most straightforward talk on the subject of her sexual experience. She was quoted as saying: "I had no pressures (to have sex). It was my own decision. We were going out four or five months before we had sex." Brief for the American Society of Newspaper Editors, Amici Curiae, in Support of Affirmance at 19, A-3, Hazelwood School Dist. v. Kuhlmeier, 108 S. Ct. 562 (1988) (No. 86-836).

85. *Kuhlmeier*, 108 S. Ct. at 571-72. *But see* Reply Brief for Petitioners at 17, Hazelwood School Dist. v. Kuhlmeier, 108 S. Ct. 562 (1988) (No. 86-836) (Hazelwood School District said that the youngest *Spectrum* readers were 14).

86. A student who the principal thought had been named in the article provided this quote: "My dad wasn't spending enough time with my mom, my sister and I. He was always out of town on business or out late playing cards with the guys. My parents always argued about everything . . . . In the beginning I thought I caused the problem, but now I realize[d] it wasn't me." Kuhlmeier v. Hazelwood School Dist., 795 F.2d 1368, 1376 (8th Cir. 1986).

87. *Kuhlmeier*, 108 S. Ct. at 572. The principal was unaware the faculty adviser had already deleted the identifying name in the proofs which were to be returned to the printer. *Id.* at 566. Underlying the censorship of the divorce article was the Hazelwood School District officials' belief that "divorce is per se an inappropriate subject for high school newspapers." 795 F.2d at 1376.

88. The dissent contended that the majority "denudes high school students of much of the First Amendment protection that *Tinker* itself prescribed." *Kuhlmeier*, 108 S. Ct. at 580 (Brennan, J., dissenting). According to the dissent, the majority teaches "youth to discount important principles of our government as mere platitudes." *Id.* (citing W. Va. State Bd. of

Court had never before made a distinction between personal and school-sponsored speech.[89]

Justice Brennan wrote that none of the three "excuses" the majority used[90] to justify its decision to grant officials greater censorship powers over school-sponsored speech justified the distinction[91] between the two types of student speech.[92] First, *Tinker* addresses the right of school officials to control the curriculum.[93] Second, Justice Brennan stated that shielding high school students from exposure to potentially sensitive topics or unacceptable social viewpoints is an illegitimate exercise of school authority.[94] Finally, Brennan found that the school's legitimate concern that people might erroneously attribute the views of the individual speaker to the school can be alleviated through means less oppressive than "brutal censorship."[95]

Educ. v. Barnette, 319 U.S. 624, 637 (1945)). The majority's permitting censorship of some student speech for "mere incompatibility with the school's pedagogical message" could convert "our public schools into 'enclaves of totalitarianism.' " *Id.* at 574 (citing Tinker v. Des Moines Indep. Comm. School Dist., 393 U.S. 503, 511 (1969)).

89. *Id.* at 575 (citing Papish v. Univ. of Mo. Bd. of Curators, 410 U.S. 667 (1973) (per curiam) and Healy v. James, 408 U.S. 169 (1972)). In *Papish*, the Court stated that university officials violated the first amendment rights of a student expelled for printing the headline, "Mother-Fucker Acquitted." The headline was over an article in a newspaper sold on campus pursuant to university authorization. The story was about the trial of a member of an organization known as "Up Against the Wall, Mother-Fucker." In *Healy* the Court stated that a college president violated the first amendment rights of members of Students for a Democratic Society (SDS) by refusing official recognition of the group. One of the benefits of such recognition, the Court noted, would be access to the pages of the school newspaper for SDS announcements. 408 U.S. at 176. Justice Brennan pointed out that in both of these cases, the Court relied heavily on *Tinker*, and found each act of suppression unconstitutional, despite the fact that each involved school-sponsored speech. *Kuhlmeier*, 108 S. Ct. at 575-76 (Brennan, J., dissenting).

90. *Kuhlmeier*, 108 S. Ct. at 570. *See supra* note 79 and accompanying text.

91. *Kuhlmeier*, 108 S. Ct. at 569-70. *See supra* notes 72-79 and accompanying text.

92. *Kuhlmeier*, 108 S. Ct. at 576 (Brennan, J., dissenting).

93. *Id.* Under the *Tinker* standard, the school can discipline "the budding political orator if he disrupts calculus class but not if he holds his tongue for the cafeteria." *Id.* Justice Brennan stated that such a result is not because a more stringent standard of control occurs in curricular activities, but because student speech outside curricular activities is less likely to disrupt the work of the school. Therefore, Justice Brennan stated, "[W]e need not abandon *Tinker* . . .; we need only apply it." *Id.*

94. *Id.* at 577. While it is the school's place to instill moral and political values, Brennan wrote, the school has no license to act as " 'thought police' stifling discussion of all but state-approved topics and advocacy of all but the official position." *Id.* The state, even in its capacity as educator, "may not assume an Orwellian 'guardianship of the public mind.' " *Id.* (citing Thomas v. Collins, 323 U.S. 516 (1945) (Jackson, J., concurring)).

95. *Id.* at 579. Justice Brennan offered two examples of less-oppressive means for a school to disassociate itself from student speech. First, a school could publish a disclaimer, such as the "Statement of Policy" which appeared in *Spectrum* each year announcing that "editorials appearing in this newspaper reflect the opinions of the *Spectrum* staff, which are not necessarily shared by the administrators or faculty of Hazelwood East . . . ." *Id.* Alternately, the

Applying the *Tinker* analysis to the censored articles in *Spectrum*, Justice Brennan found the censorship invalid because the articles neither prevented material disruption of classwork nor invaded any rights of others which were protected by law.[96] Justice Brennan concluded by contending that even if the principal could legitimately censor, he should have done it in a fashion other than the one he used.[97]

The Supreme Court indicates through *Kuhlmeier* that while students may bring their constitutional rights into the schoolyard, those rights will derive from a constitution which folds and sags at school. A student's right to free expression will be a right defined by a principal or a school board, not the Constitution. The *Kuhlmeier* holding follows the theory put forth in another leading student rights case decided by the Court recently, *New Jersey v. T.L.O.*[98] The *T.L.O.* majority, through Justice White, told school officials they could intrude upon students' privacy rights without worrying about the "niceties of probable cause."[99]

The significance of the Supreme Court's sweeping grant of censorship powers to state and local education officials stretches far beyond the boundaries of East Hazelwood High School, or even student newspaper offices across the nation.[100] The decision seems to affect

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school could issue "its own response clarifying the official position on the matter and explaining why [the school finds] the student position is wrong." *Id.*

96. *Id.* The *Kuhlmeier* majority expressly reserved judgment on the issue of whether *Tinker*, which permits school officials to censor student speech which invades the rights of others, only refers to rights recognized by tort law. *Id.* at 570 n.5. The Eighth Circuit Court of Appeals concluded the rights of others which give rise to permissible school censorship are limited to rights recognized by law: "Any yardstick less exacting than [that] could result in school officials curtailing speech at the slightest fear of disturbance." Kuhlmeier v. Hazelwood School Dist., 795 F.2d 1368, 1376 (8th Cir. 1986), *quoted in Kuhlmeier*, 108 S. Ct. at 579 (Brennan, J., dissenting). The Eighth Circuit's analysis of the invasion-of-rights component of *Tinker* relied heavily on Note, *supra* note 40.

97. *Kuhlmeier*, 108 S. Ct. at 579-80 (Brennan, J., dissenting). "Where '[t]he separation of legitimate from illegitimate speech calls for more sensitive tools,' the principal used a paper shredder." *Id.* at 580 (citations omitted). The principal "objected to . . . material in two articles, but excised six entire articles. He did not so much as inquire into obvious alternatives, such as precise deletions or additions . . ., rearranging the layout, or delaying publication." *Id.*

98. 469 U.S. 325 (1985) (a vice principal's search of a student's purse was proper after student violated school rule against smoking cigarettes in the bathroom).

99. *Id.* at 343.

100. The opinion, perhaps because of its particular concern to the news media, received much attention, including front-page newspaper articles. *See, e.g., Schools Get Right to Censor*, Ark. Democrat, Jan. 14, 1988, at 1A, col. 2; Byrd, *Arkansas Student Press Surprised at Court Censorship Powers Ruling*, Baxter Bull., Jan. 14, 1988, at 1A, col. 1. In *Court to Student Editors: Teacher Knows Best*, U.S. NEWS & WORLD REP., Jan. 25, 1988, at 10, the magazine predicts that the "ruling . . . could return student papers and even school plays to an era of

not only all student newspapers[101] but school theatrical productions[102] and other expressive activities sponsored by the school.[103] The Court said school officials could legitimately censor a wide range of expression, offering examples ranging from speech concerning "the existence of Santa Clause" to "any position other than neutrality on matters of political controversy."[104]

The Court left open the possibility that the reasonableness standard for censorship review could eventually extend to the college and university press—including law journals. The majority ominously noted, "[w]e need not now decide whether the same degree of deference is appropriate with respect to school-sponsored expressive activities at the college and university level."[105]

Many school officials practice censorship, according to overwhelming evidence.[106] One scholar offered as a reason for the broad censorship in schools the problem that judicial review of censorship decisions occurs only when the relatively powerless student has the courage and the money to challenge the powerful school censor.[107] Because *Kuhlmeier* greatly increases the school administrator's freedom to censor, a dramatic increase in student self-censorship and student cynicism regarding the first amendment could develop into the

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blandness." *See also* Garneau, *A 'First Amendment Disaster,'* EDITOR & PUBLISHER, Jan. 16, 1988, at 12, in which Jane Kirtley, director of the Reporters Committee for Freedom of the Press, said the decision extends blank-check censorship over school-sponsored communication: "For the high school press this is a very dark day."

101. "[A]ll student newspapers financed and supervised by the public schools would seem to come under the new ruling, not only those that are produced as part of a journalism curriculum." Seligmann, *A Limit on the Student Press—Now It's All the News that Fits the Principal*, NEWSWEEK, Jan. 25, 1988, at 60.

102. *But cf. Court to Student Editors: Teacher Knows Best*, *supra* note 100 (students in a Portland, Ore., high school cite state law in their challenge of the deletion of supposedly profane phrases from a student production of John Steinbeck's *Of Mice and Men*).

103. *Kuhlmeier*, 108 S. Ct. at 570. "A school must be able to set high standards for the student speech that is disseminated under its auspices . . . and may refuse to disseminate student speech that does not meet those standards." *Id.*

104. *Id.* A "school must be able to take into account the emotional maturity of the intended audience in determining whether to disseminate student speech on potentially sensitive topics . . . ." *Id. Cf.* Fowler, *Teachers, Students React to Decision on School Papers*, Ark. Democrat, Jan. 14, 1988, at 7A, col. 5, in which a Northeast High School journalism teacher in North Little Rock is quoted: "We're telling them that certain topics are not proper for them to write about. These are things that affect students, and they can't even write about them. What are they supposed to be concerned with—fashion?"

105. 108 S. Ct. at 571 n.7.

106. In 1986, the Student Press Law Center received 551 requests for legal advice and assistance. Brief of Student Press Law Center, as Amici Curiae, in Support of Respondents at 19, *Kuhlmeier*, 108 S. Ct. 562 (1988) (No. 86-836). *See also infra* notes 107-08, 110.

107. *See* Letwin, *Administrative Censorship of the Independent Student Press—Demise of the Double Standard?*, 28 S.C.L. REV. 565, 581 (1977).

decision's greatest evil.[108]

Traditionally, the Court has approved censorship actions by the state only with the most delicate, limiting language it can find.[109] But Justice White, by stressing the importance of the nonpublic forum doctrine to the Court's decision, painted the right to censor in *Kuhlmeier* with the broadest brush available without expressly overruling *Tinker*.[110] The *Kuhlmeier* Court, using its nonpublic forum analysis, could find that no right exists for a student to wear a protest armband to class if his school has banned from school all symbols of political or controversial significance.[111] Such an approach transforms *Tinker* into a public forum decision, not a decision about free expression rights of students. The approach ensures against the appearance of a *Tinker* case before the Court again, thus encouraging more school censorship and less student expression. The Court elevated the educational goals of discipline and conformity above goals such as robust discussion and independent thinking.

Kuhlmeier means that student journalists must consider new approaches to publishing stories that school censors may disfavor.[112] The censored Hazelwood articles, which the principal and Supreme

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108. For an in-depth look at the problems created by school censorship, *see* CAPTIVE VOICES, THE REPORT OF THE COMMISSION OF INQUIRY INTO HIGH SCHOOL JOURNALISM (1974). The evidence indicated that most high school press censorship focuses on controversial political issues, criticism of school employees or school policies, and social problems. *Id.* at 41.

109. Even where the state abridgement of free speech is legitimate, involving a substantial governmental interest, the government must use the least restrictive means possible to achieve that purpose. Shelton v. Tucker, 364 U.S. 479, 488 (1960) (striking down Arkansas statute requiring teachers to list all organizations to which they belonged or contributed in the previous five years).

110. Justice White depended much more upon the language in Bethel School Dist. No. 403 v. Fraser, 106 S. Ct. 3159 (1986) than he did on *Tinker*. However, this was unnecessary since *Fraser* is distinguishable from *Kuhlmeier* in three key respects: in *Fraser*, punishment occurred *after* speech which was said to be *vulgar* and which was delivered to, in some respects, a *captive audience*. In *Kuhlmeier*, the state action came *prior* to publication and involved neither *vulgar* speech nor a *captive audience*.

111. *Tinker* could be distinguished by the *Kuhlmeier* Court by pointing out that in the Des Moines public schools that John Tinker attended, principals allowed students to wear national political campaign buttons and the Iron Cross, a symbol of Nazi Germany. Tinker v. Des Moines Indep. Community School Dist., 393 U.S. 503, 510 (1969). Thus, the Court could say, the school created a limited public forum for the purposes of wearing political symbols in class.

112. Thomas J. Engleman, executive director of the Dow Jones Newspaper Fund, said in reaction to *Kuhlmeier* that alternative expression may become increasingly important, citing such examples as the Youth News Service sponsored by Youth Communication of Washington, youth pages in local newspapers, computerized networks for students to transmit their stories to other publications, and publication and distribution of student newspapers by local daily newspapers. *Supreme Court Authorizes Student Press Censorship*, PRESSTIME, Feb. 1988, at 44. *Newsweek* quoted New York lawyer Alan Levine, author of *The Rights of Students*, as

Court agreed were produced by students who had not sufficiently mastered necessary parts of the journalism curriculum, were eventually published in their entirety in a major daily newspaper.[113] Obviously, most student-written articles will not raise enough public attention for this sort of treatment. Desktop publishing coupled with a spotty tradition of underground newspapers on school campuses could give student journalists an alternative beyond the reach of school censors.[114] But the incentive for such a self-help alternative may be missing for students who wish to practice uncensored speech in traditional school activities such as theatrical productions or debate clubs. The Court's grant of censorship powers may be too broad for expressive students to escape.

Charles William Burton

saying, "The [student] papers will be more orthodox and bland. The only alternative will be leaflets and an underground press." Seligmann, *supra* note 101.

113. *Too Hot for Hazelwood*, St. Louis Globe Democrat, Feb. 9, 1985, (Weekend Section), at 5.

114. A week after the *Kuhlmeier* ruling, students in Evergreen High School in Los Angeles, who had been wrangling with their principal over heavy administrative editing of a story on rock lyrics and the banning of a survey on sexual attitudes, published an underground version of what had been a school-sponsored paper. *Students Opposed to Supreme Court Ruling Publish Underground Paper*, The Associated Press, Jan. 20, 1988, at a0797 (AM-Underground Paper).